

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

CRIMINAL 05-0047CCC

1) JOSE R. LUGO-GUERRERO
2) **OSCAR SOSA-DELGADO**
3) ALEXANDER GUZMAN-DEL-VALLE

Defendants

ORDER

Before the Court is the Objection to Pre-Sentence Report filed by defendant Oscar Sosa-Delgado on August 20, 2005 (**docket entry 71**), which remains unopposed, where he challenges the two-level upward adjustment awarded to him under advisory Guideline §3C1.2 for obstruction of justice. The U.S. Probation Officer applied the adjustment after concluding that “defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer.” Pre-Sentence Report (docket entry 73), at p. 5, ¶10. The specific factual basis for the adjustment was obtained from unidentified government’s witnesses who described that “the driver of the car was swerving through traffic, making erratic lane changes without using turn signals and even drove over two lane dividers causing a flat tire in the process.” PSR, at p. 4, ¶6. The PSR, however, identifies the driver of the car as co-defendant Alexander Guzmán. PSR, at p. 3, ¶5. Defendant stresses the fact that he was not driving the fleeing vehicle, and submits in addition that the discovery provided to him shows that he was continuously asking the driver to stop the car so that he could get off.

Given that the adjustment is essentially based on reckless driving while fleeing from the authorities, it being undisputed that defendant was not the driver of the getaway car, and there being no evidence before us that he instigated, commanded, procured or induced said reckless driving, the Court will not apply the adjustment under §3C1.2. Accordingly, defendant’s objection is SUSTAINED.

SO ORDERED.

At San Juan, Puerto Rico, on September 7, 2005.

S/CARMEN CONSUELO CEREZO
United States District Judge